

## **REMARKS**

This is a full and timely response to the outstanding final Office Action mailed on November 10, 2005 (Paper No. 20051101). Through this response, claims 239-241, 244-246, 250-252, 254-256, 260, 279 and 280 have been amended, and claims 281-297 have been added. Claims 1-238 and 261-278 have been canceled previously. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Claim Objections**

Claims 245 and 255 have been objected to in accordance with 37 C.F.R. § 1.126 as being dependent on later claims 279 and 280, respectively. In response, Applicant has amended claims 245 and 255 so that they no longer depend from later claims.

### **II. Response to Claim Rejections Under 35 U.S.C. § 103**

#### **A. Statement of the Rejection**

Claims 239-260 and claims 279-280 have been rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,880,768 to Lemmons *et al.*, hereinafter referred to as *Lemmons*, in view of U.S. Patent No. 6,388,714 to Schein *et al.*, hereinafter referred to as *Schein*. Applicant respectfully traverses this rejection.

#### **B. Discussion of the Rejection**

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office (“USPTO”) has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or

references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, is respectfully asserted that a *prima facie* case for obviousness has not been established.

### Independent Claim 239

Independent claim 239, as amended, recites:

239. A method for providing television services by a television set-top terminal ("STT"), comprising:  
responsive to a first user input,  
receiving by the STT information corresponding to *a first user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end-time,*  
receiving by the STT *at least one parameter corresponding to a user preference,*  
storing data in memory of the STT *associating the at least one parameter with the first user-defined time interval,* and  
enabling access to purchasable television services during the first user-defined time interval according to the at least one parameter;  
responsive to a second user input,  
receiving by the STT a request for a purchasable television service corresponding to the at least one parameter,  
accessing the data in memory of the STT associating the at least one parameter with the first user-defined time interval,  
determining whether the request is for viewing the purchasable television service during the first user-defined time interval,  
enabling by the STT a purchase of the purchasable television service responsive to determining that the request is for viewing the purchasable television service during the first user-defined time interval, and  
preventing by the STT the purchase of the purchasable television service responsive to determining that the request is for viewing the purchasable television service outside the first user-defined time interval.

*(Emphasis added.)*

Applicant respectfully submits that the combination of *Lemmons* in view of *Schein* does not disclose, teach or suggest the emphasized features. More specifically, *Lemmons* in view of *Schein* does not disclose, teach or suggest “a first user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end-time,” “at least one parameter corresponding to a user preference,” and “associating the at least one parameter with the first user-defined time interval” as recited in independent claim 239.

On page 3 of the Office Action, it is asserted that *Lemmons* discloses that a “... user uses a remote 78 for providing input commands to the set top terminal 70 (as shown in Fig. 2), and the user can schedule their favorite programs and services, by defining the interested time intervals of start time and end time ... as shown in Fig.8....” Applicant respectfully disagrees with this characterization of *Lemmons*.

*Lemmons* appears, *arguendo*, to teach that a user selects programs of necessarily predetermined length available during predefined windows. Specifically, *Lemmons* recites:

The screen 100 further includes a program grid 112. Essentially, the program grid 112 displays at any given time, a subset of the program schedule information stored in the memory 76 (FIG. 2). The program grid 112 is divided into a plurality of program cells 114. Each program cell 114 contains information pertaining to a particular television program. In the preferred embodiment, this information always includes the program title, but as shown, the information for any particular program may also include release year, MPAA rating (for movies), theme, etc. The length of each program cell 114 corresponds to the length of the program named therein, and may span more than one time period. Thus, the **viewer can easily determine the start time, stop time and length of each program** by simply comparing the boundaries of the particular program cell 114 of interest to the time bar 102.

*Lemmons* column 8, line 58 – column 9, line 6. (*Emphasis added.*)

As indicated above, *Lemmons* appears, *arguendo*, to teach that the viewer can “determine” the already defined length of each program, and thus the viewer is not “defining the interested time intervals of start time and end time,” as asserted in the Office Action. There is no discussion of a viewer having the ability to set or define a “time interval.”

Further, *Lemmons* appears, *arguendo*, to teach predefined windows or intervals for display by the program guide screen:

FIG. 5 depicts the program guide screen 100 as it appears when the viewer selects the Prime Time navigation point from the quickmenu 116 (FIG. 3). Prime time program schedule information for the date shown in the date cell 106 is displayed for the main channel line-up, starting with the first channel (e.g., channel 2). **The hours constituting "Prime Time" are defined by operational parameters stored in the memory 76 (FIG. 2); therefore, they may be set by either the data center 52 (FIG. 1) or the headend telecasting center 54 (FIG. 1).** The display starts at the beginning of prime time and at the lowest channel (without regard to the current time period or the channel to which the tuning circuitry 72 (FIG. 2) is currently tuned). If Prime Time is selected for the current date, and the current time period is later than the starting Prime Time hour defined by the operating parameters, **the program grid 112 preferably displays program schedule information starting at the beginning of prime time** if the data are still available.

*Lemmons column 11, lines 27-44. (Emphasis added.)*

As indicated above, *Lemmons* appears, *arguendo*, to teach operational parameters, set by either the data center or the headend telecasting center, that determine the hours constituting prime time. The viewer may select prime time and then the program guide screen depicts "program schedule information starting at the beginning of prime time" as programming choices from which the viewer may select. *Lemmons column 11, lines 42-44.* There is no discussion of a viewer's ability to define a different time interval than those, such as prime time, "defined by operational parameters stored in the memory." *Lemmons column 11, lines 33-34.*

Indeed, *Lemmons* appears, *arguendo*, to teach viewer navigation:

The day to view screen 300 appears on the display 84 (FIG. 2) when the viewer selects the Day to View display mode from the quickmenu 116 (FIG. 3). In accordance with the invention, the Day to View display mode provides a convenient graphical user interface that **allows the viewer to quickly navigate to program schedule information** for programs to be telecast (or being telecast) on a specified date. The Day to View display mode provides for even **more precise navigation by allowing the viewer to specify a day part (i.e., a range of hours) for the specified date.** When the viewer returns to the program guide screen 100 (FIGS. 3-6) after specifying a date and day part using the screen 300, the program grid 112 navigates to program schedule information for the specified date and day part. However, it should be noted that the specified date and day part do not limit the amount of or in any sense restrictively select the program schedule information available or displayed to the viewer (i.e., they are not restrictive selection criteria). Rather, the Day to View display mode **operates as a positioning tool.**

*Lemmons, column 16, lines 9-27. (Emphasis added.)*

As indicated above, *Lemmons* appears, *arguendo*, to teach allowing for viewer navigation “to program schedule information,” and also for more precise navigation where the viewer may specify a “day part” or “range of hours.” More specifically regarding the “day part,” *Lemmons* recites:

The **day part menu 304 preferably includes a plurality of day part cells 322.** In the example shown in FIG. 8, the day part menu 304 includes six day part cells 322 each representing four hours of program schedule information.

*Lemmons column 17, lines 19-22. (Emphasis added.)*

As indicated above, *Lemmons* appears, *arguendo*, to teach, intervals that are already defined “day part” intervals for facilitating ease of navigating the program information. Further, *Lemmons*, in Fig. 8, appears, *arguendo*, to teach narrowing the amount of program information provided to the user according to the predefined day part interval. *Lemmons* discloses that after “**a date and day part have been selected**, the viewer can return to the Program Guide display mode ... to view program schedule information for the date and day part selected.” *Column 17, lines 35-38. (Emphasis added.)* Again, *Lemmons* appears, *arguendo*, to teach selecting from predefined windows or intervals as would appear to be consistent with operation “as a positioning tool.” *Column 16, line 27.*

Further, *Lemmons* has no teaching associating a “user preference” with an actual “user-defined time interval.” *Lemmons* recites at column 19, lines 6-15:

Once a **favorite channel line-up** has been stored in the memory 76 (FIG. 2), it is **automatically applied to the program schedule information** each time the interactive program guide is invoked. In an alternative embodiment, the interactive program guide allows for creation and storage of several different favorite channel line-ups (e.g., one for each member of a household). To accomplish this, the interactive program guide requests a personal identification number (not shown) each time the guide is invoked. The personal identification number is used to uniquely identify each favorite channel line-up.

*(Emphasis added.)*

As indicated above, *Lemmons* appears, *arguendo*, to teach setting favorite channels, rather than programs, “applied to the program schedule information” and uniquely identifying “each favorite channel line-up.” A favorite channel line-up is not a favorite program, but even if *Lemmons*

teaches, *arguendo*, a user setting a favorite program, the start time and end time of a program are predefined by the program's start time and end time and thus is not a "user-defined time interval." Applicant respectfully submits that associating a favorite channel line-up with a user is not the same as associating a "user-preference" with a "user-defined time interval."

Applicant respectfully submits that viewer selection of prior defined intervals does not equate to "a first user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end-time," "at least one parameter corresponding to a user preference," and "associating the at least one parameter with the first user-defined time interval," as recited in independent claim 239.

Likewise, *Schein* appears, *arguendo*, to teach an interactive system for providing television schedules and other information. More specifically, *Schein* recites:

In the embodiment of the present invention shown in FIG. 1, two programs provided at the same time can be automatically recorded because two VCRs 34 and 36 are present. **The user need only select two programs for recording and the present invention will automatically cause the programs to be recorded when they are aired in an unattended fashion.** The user can also directly select which device or devices will be recording or tuning for each selected program. For example, the user may wish to have M.A.S.H. 62 recorded by VCR 34 and I LOVE LUCY 64 recorded by VCR 36. In this example, the computer software on hard drive 14, **at the program start time, (1) tunes VCR 34 to the channel carrying I LOVE LUCY, (2) turns VCR 34 "on", and (3) activates the record function on VCR 34. If I LOVE LUCY starts at the same time as M.A.S.H., the software also, at approximately the same time, (1) tunes VCR 36 to the channel carrying M.A.S.H., (2) turns VCR 36 "on", and (3) activates the record function on VCR 36. At the program end time for M.A.S.H., the software turns "off" the record function, and then turns "off" VCR 34. The same sequence takes place for VCR 36 when the program end time for I LOVE LUCY occurs.**

*(Emphasis added.)*

As indicated above, *Schein* appears, *arguendo*, to teach that the user need only select two programs for recording and the programs are recorded automatically. The VCRs operate automatically based on the predefined start time and end time of the selected programs. There is no discussion of a "first user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end-time," as recited in independent claim 239.

Applicant respectfully submits that the selection of a prior defined time interval is not the same as a time interval defined by the user, and that the combination of *Lemmons* and *Schein* do not disclose, teach or suggest “a first user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end-time,” “at least one parameter corresponding to a user preference,” and “associating the at least one parameter with the first user-defined time interval,” as recited in independent claim 239. Applicant respectfully submits that the rejection to independent claim 239 be withdrawn.

Further, Applicant respectfully submits that because independent claim 239 is allowable, as argued above, dependent claims 240-249 and 279 are allowable as a matter of law for at least the reason that they contain all the elements, features and limitations of independent claim 239. *See In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.

#### **Independent Claim 250**

Independent claim 250, as amended, recites:

250. A method for providing recorded television ~~content instances~~ services by a television set-top terminal (“STT”), comprising:  
responsive to a first user input,  
*receiving by the STT information corresponding to a user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end time,*  
receiving by the STT at least one parameter corresponding to a user preference,  
storing data in memory of the STT associating the at least one parameter with the first user-defined time interval,  
enabling recording of television services during the first user-defined time interval according to the at least one parameter;  
responsive to a second user input,  
receiving by the STT a request for recording a television service corresponding to the at least one parameter,  
accessing the data in memory of the STT associating the at least one parameter with the first user-defined time interval,  
determining whether the request is for recording the television service during the first user-defined time interval,  
enabling a recording of the television service responsive to

determining that the request is for recording the television service during the first user-defined time interval, and preventing the recording of the television service responsive to determining that the request is for recording the television service outside the first user-defined time interval.

*(Emphasis added.)*

Applicant respectfully submits that the combination of *Lemmons* in view of *Schein* does not disclose, teach or suggest the emphasized features. More specifically, *Lemmons* in view of *Schein* does not disclose, teach or suggest “receiving by the STT information corresponding to a user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end time,” as recited in independent claim 250.

As argued above, *Lemmons* appears, *arguendo*, to teach that a user selects programs of necessarily predetermined length available during predefined windows or intervals as would appear to be consistent with operation “as a positioning tool.” *Lemmons column 16, line 27*. Further, as also argued above, *Schein* appears, *arguendo*, to teach recording based on the predefined start time and end time of the selected programs.

Applicant respectfully submits that the selection of a prior defined time interval is not the same as a time interval defined by the user, and that the combination of *Lemmons* and *Schein* do not disclose, teach or suggest “receiving by the STT information corresponding to a user-defined time interval, the start and end times of the first user-defined time interval corresponding respectively to a user-selected start time and a user-selected end time,” as recited in independent claim 250. Applicant respectfully submits that the rejection to independent claim 250 be withdrawn.

Further, Applicant respectfully submits that because independent claim 250 is allowable, as argued above, dependent claims 251-260 and 280 are allowable as a matter of law for at least the reason that they contain all the elements, features and limitations of independent claim 250. *See In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of these claims be withdrawn.



### **III. New Claims**

As identified above, claims 281-297 have been added into the application through this Response. Applicant respectfully submits that these new claims describe an invention novel and unobvious in view of the prior art of record and, therefore, respectfully request that these claims be held to be allowable.

### **CONCLUSION**

Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

Applicant respectfully maintains that currently pending claims are in condition for allowance. Should the Examiner have any comments or suggestions that would place the subject patent application in better condition for allowance, she is respectfully requested to telephone the undersigned attorney at (770) 933-9500.

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& RISLEY, L.L.P.**

A handwritten signature in black ink, appearing to be 'T. Kayden', is written over a horizontal line.

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